

CRIMINAL YEAR SEMINAR

April 17, 2020
Webinar



Criminal Code Update

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Distributed By:

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2020 APAAC CRIMINAL YEAR IN
REVIEW:
THE ARIZONA CRIMINAL CODE

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1

13-106. DEATH OF A CONVICTED
DEFENDANT: DISMISSAL OF APPELLATE AND
POSTCONVICTION PROCEEDINGS

A. On a convicted defendant's death, the court shall dismiss any pending appeal or postconviction proceeding.

B. A convicted defendant's death does not abate the defendant's criminal conviction or sentence of imprisonment or any restitution, fine or assessment imposed by the sentencing court.

2

STATE V. REED, 248 ARIZ. 72 (2020)

Issue:

Whether the Legislature had authority to enact A.R.S. § 13-106 and if the legislature did have authority, whether § 13-106(A) nevertheless violates state constitution by divesting defendants of their right to appeal



3

STATE V. REED, 248 ARIZ. 72 (2020)

Notes:

Procedural v. substantive discussion

Separation of powers

See also: *State v. Patel* (pending in AZ Supreme Court – legislature's authority under VBR to cap restitution)

Dismissed

4

13-106. DEATH OF CONVICTED DEFENDANT; DISMISSAL OF APPELLATE AND POST- CONVICTION PROCEEDINGS

NOPE

A. On a convicted defendant's death, the court shall dismiss any pending appeal or post-conviction proceeding.

OK

B. A convicted defendant's death does not abate the defendant's criminal conviction or sentence of imprisonment or any restitution, fine or assessment imposed by the sentencing court.

5

13-116. DOUBLE PUNISHMENT

An act or omission which is made punishable in different ways by different sections of the laws may be punished under both, but in no event may sentences be other than concurrent. An acquittal or conviction and sentence under either one bars a prosecution for the same act or omission under any other, to the extent the Constitution of the United States or of this state require.

6

STATE V. ROBERTSON, 246 ARIZ. 438 (APP. 2019), REVIEW GRANTED FEB. 11, 2020

You're Invited!


ERROR

Issue:
Whether the sentence of imprisonment imposed after Robertson's probation was revoked was illegal under A.R.S. § 13-116 because she had already served a prison sentence for the same act involving the same victim.

7

STATE V. ROBERTSON, 246 ARIZ. 438 (APP. 2019), REVIEW GRANTED

Plea Agreement



Waiver v. invited error?

Also, footnote 4:
The State also argues that because Robertson's offenses occurred over a one-week period, the counts involved different acts and A.R.S. § 13-116 is not implicated. Because the invited-error doctrine resolves this case, we do not need to decide that issue.

8

13-502. INSANITY TEST: BURDEN OF PROOF; GUILTY EXCEPT INSANE VERDICT

A. A person may be found guilty except insane if at the time of the commission of the criminal act the person was afflicted with a mental disease or defect of such severity that the person did not know the criminal act was wrong. A mental disease or defect constituting legal insanity is an affirmative defense. Mental disease or defect does not include disorders that result from acute voluntary intoxication or withdrawal from alcohol or drugs, character defects, psychosexual disorders or impulse control disorders. Conditions that do not constitute legal insanity include but are not limited to momentary, temporary conditions arising from the pressure of the circumstances, moral decadence, depravity or passion growing out of anger, jealousy, revenge, hatred or other motives in a person who does not suffer from a mental disease or defect or an abnormality that is manifested only by criminal conduct.

9

STATE V. MALONE, 247 ARIZ. 29 (2019)**Issue:**

Whether a defendant who introduces expert evidence of a character trait for impulsivity to challenge premeditation may also introduce evidence of brain damage to corroborate the existence of that trait.

10



10-question self-assessment impulsivity test:
<https://psychologia.co/impulsivity/>

11

STATE V. MALONE, 247 ARIZ. 29 (2019)**Holding:**

Mental disease or defect evidence cannot be admitted to show that a defendant was less likely to have formed the mens rea element of a crime even if that evidence corroborates behavioral-tendency evidence.



12

13-603. AUTHORIZED DISPOSITION OF OFFENDERS

C. If a person is convicted of an offense, the court shall require the convicted person to make restitution to the person **who is the victim of the crime or to the immediate family of the victim if the victim has died**, in the full amount of the economic loss as determined by the court



13

13-804. RESTITUTION FOR OFFENSE CAUSING ECONOMIC LOSS

A. On a defendant's conviction for an offense causing economic loss to any person, the court, in its sole discretion, may order that all or any portion of the fine imposed be allocated as restitution to be paid by the defendant to **any person** who suffered an **economic loss** caused by the defendant's conduct.



14

STATE V. LEAL, 248 ARIZ. 1 (APP. 2019)

Issue:

Whether a Native American Tribe may collect restitution even though it is not the victim of a crime.



15

13-105. DEFINITIONS

In this title, unless the context otherwise requires:

30. "Person" means a human being and, as the context requires, an enterprise, a public or private corporation, an unincorporated association, a partnership, a firm, a society, a government, a governmental authority or an individual or entity capable of holding a legal or beneficial interest in property.



16

STATE V. LEAL, 248 ARIZ. 1 (APP. 2019)

Holding:

Although § 13-603(C) is somewhat restrictive in the persons or entities that may receive restitution, the availability of restitution under § 13-804(A) is broad. The trial court had discretion to award restitution to the Quechan Indian Tribe, who paid the victim's funeral expenses.

17

13-1004. FACILITATION; CLASSIFICATION

A. A person commits facilitation if, acting with knowledge that another person is committing or intends to commit an offense, the person knowingly provides the other person with means or opportunity for the commission of the offense.

18

STATE V. BURCH, 247 ARIZ. 376 (APP. 2019)

Issue: Whether the defendant is entitled to a facilitation instruction as a lesser-included offense where the State presents its case on an accomplice liability theory.



19

STATE V. BURCH, 247 ARIZ. 376 (APP. 2019)

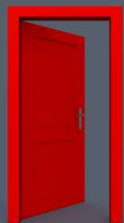
Holding: If it is possible to commit the charged offense without committing facilitation, a defendant is not entitled to a facilitation instruction just because the state seeks conviction on an accomplice liability theory; if the person cannot commit the charged offense without an accomplice, the person is entitled to a facilitation instruction



20

STATE V. BURCH, 247 ARIZ. 376 (APP. 2019)

“[O]ur supreme court has left open the possibility that a defendant would be entitled to a facilitation instruction if the charging document sets out facts that describe facilitation. ...”
(citing *State v. Scott*, 177 Ariz. 131 (1993)).



21

13-1801.DEFINITIONS

A. In this chapter, unless the context otherwise requires:

13. "Property of another" means property in which any person other than the defendant has an interest on which the defendant is not privileged to infringe, including property in which the defendant also has an interest . . .



22

STATE V. DANSDILL, 246 ARIZ. 593 (APP. 2019)

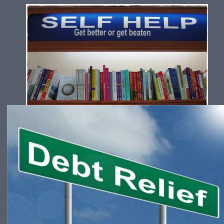
Issue: Whether "property of another" includes money that the debtor owes the Defendant.



23

STATE V. DANSDILL, 246 ARIZ. 593 (APP. 2019)

Holding: Unless defendant can trace ownership to specific coins and bills in possession of debtor, debtor is owner of money in debtor's possession, and intent to steal is present when defendant at gun point or by force secures specific money that does not belong to defendant in order to apply it by such self-help to debt owed.



24

13-1805. SHOPLIFTING

A. A person commits shoplifting if, while in an establishment in which merchandise is displayed for sale, the person knowingly obtains such goods of another with the intent to deprive that person of such goods by:

1. Removing any of the goods from the immediate display or from any other place within the establishment without paying the purchase price;
or

....

5. Concealment.

25

STATE V. MORRIS, 246 ARIZ. 156 (APP. 2019)

Issue: Whether shoplifting by concealment requires a person to pass the point of sale in order to "obtain" the goods of another with the intent to deprive that person of such goods.



26

STATE V. MORRIS, 246 ARIZ. 156 (APP. 2019)

Holding: There is no requirement that the suspect pass the point of sale before committing shoplifting by concealment. The crime is complete at time of concealment.



27

13-2321. PARTICIPATING IN OR ASSISTING A CRIMINAL STREET GANG; CLASSIFICATION

A. A person commits participating in a criminal street gang by any of the following:

1. Intentionally organizing, managing, directing, supervising or financing a criminal street gang with the intent to promote or further the criminal objectives of the criminal street gang.
2. Knowingly inciting or inducing others to engage in violence or intimidation to promote or further the criminal objectives of a criminal street gang.
3. Furnishing advice or direction in the conduct, financing or management of a criminal street gang's affairs with the intent to promote or further the criminal objectives of a criminal street gang.

28

STATE V. HERNANDEZ, 246 ARIZ. 407 (APP. 2019)

Issue:

Whether the interception of letters before they reached their recipients precludes convictions for participating in a criminal street gang because the language of § 13-2321(A) requires completed communication between a defendant and the intended recipient of the communication



29

STATE V. HERNANDEZ, 246 ARIZ. 407 (APP. 2019)

Under § 13-2321(A)(1), "[e]ach verb in § 13-2321(A)(1) implies an interaction between the person doing the organizing, managing, directing, financing, or supervising, and a criminal street gang." The Court noted that one of the letters showed that "Hernandez had managed, directed, and supervised other gang members before he sent the letters" and "even though the letters did not reach their intended recipients, they contained evidence from which the jurors could conclude that Hernandez organized, managed, directed, or supervised gang activity."

30

STATE V. HERNANDEZ, 246 ARIZ. 407 (APP. 2019)

"Under § 13-2321(A)(2), "inciting" or "inducing" individuals contemplates, "at a minimum, the State must show the defendant interacted in some way with the criminal street gang." "Because Hernandez's letters never reached their intended recipients and therefore could not have caused third parties to engage in violence, or even unsuccessfully encouraged them to do so, there was insufficient evidence to show" a violation.

Under § 13-2321(A)(3), "the State was required . . . to show Hernandez "[f]urnish[ed] advice or direction" to a criminal street gang" which requires completed communication. "[T]he defendant's efforts to furnish advice or instructions were unsuccessful" so there was no violation.

31

STATE V. HERNANDEZ, 246 ARIZ. 407 (APP. 2019)

Present Tense: Tim walks to the store. (Singular subject)

Present Tense: Sue and Kimmy walk to the store. (Plural subject)

Past Tense: Yesterday, they walked to the store for milk. (Plural subject)

Future Tense: Tomorrow, Kimmy will walk to the store to buy some bread. (Singular subject)

32

13-3967. RELEASE ON BAILABLE OFFENSES BEFORE TRIAL

A. At his appearance before a judicial officer, any person who is charged with a public offense that is bailable as a matter of right shall be ordered released pending trial on his own recognizance or on the execution of bail in an amount specified by the judicial officer.

E. In addition to any of the conditions a judicial officer may impose pursuant to subsection D of this section, the judicial officer shall impose both of the following conditions on a person who is charged with a felony violation of chapter 14 or 35.1 of this title and who is released on his own recognizance or on bail:

I. Electronic monitoring where available.

33

HISKETT V. LAMBERT, 247 ARIZ. 432 (APP. 2019)

Issue: Whether the defendant must pay the cost of pretrial electronic monitoring under A.R.S. 13-3967(E)?

34

HISKETT V. LAMBERT, 247 ARIZ. 432 (APP. 2019)

Holding: superior court lacked statutory authority to order defendant to bear cost of electronic location monitoring during pretrial release. The phrase "where available" in subsection (E)(1) encompasses actual availability of the service as well as the financial ability of the county to pay the costs of the electronic location monitoring.

35

22-301. JURISDICTION OF CRIMINAL ACTIONS

A. The justice courts shall have jurisdiction of the following offenses committed within their respective precincts:

1. Misdemeanors and....
2. Felonies, but only for the purpose of commencing action and conducting proceedings through preliminary examinations....

C. For the purposes of subsection A ... of this section, an offense is committed within the precinct of a justice court if conduct constituting any element of the offense or a result of such conduct occurs either:

1. Within the precinct.
2. Within [certain county parks]

36

LAY V. NELSON, 246 ARIZ. 173 (APP. 2019)

Issue:

Whether A.R.S. § 22-301(C) establishes the subject-matter jurisdiction of an Arizona justice court



37

LAY V. NELSON, 246 ARIZ. 173 (APP. 2019)

The Justice of the Peace (JP) Courts are county courts and are part of the State of Arizona Judicial System. The Arizona State Constitution, Article VI, and Arizona Revised Statutes, Title 22 provide the courts the mandate for the administration of justice.

Each county's board of supervisors sets the geographical boundaries, known as precinct Justice of the Peace courts. Generally, these precincts are larger than cities and towns and may contain more than one city or township. Although these geographical boundaries can be changed, a precinct cannot be abolished until the four-year term of the judge called a Justice of the Peace expires. The number of precincts in a county is determined by the County Board of Supervisors.

Yuma County presently is served by three precincts named for the city in which the court is located.

- Yuma (Precinct 1)
- South County (Precinct 2)
- Wellton (Precinct 3)

Source: <https://www.yumacountyaz.gov/government/courts/justice-courts/about-us>

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LAY V. NELSON, 246 ARIZ. 173 (APP. 2019)

"Without question, § 22-301 establishes the subject-matter jurisdiction of a justice court" and recognized that there was little case authority interpreting § 22-301, focusing instead on the legislature's use of similar language in A.R.S. § 13-108 in describing the jurisdiction of the Arizona court system to try criminal offenses.



Accordingly, the justice court had subject-matter jurisdiction under § 22-301 to try both charges because the results of the two crimes occurred at the victims' residence within the precinct.

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36-2802. ARIZONA MEDICAL MARIJUANA ACT ; LIMITATIONS

This chapter does not authorize any person to engage in, and does not prevent the imposition of any civil, criminal or other penalties for engaging in, the following conduct:

C. Smoking marijuana:

...

2. In any public place.

40

STATE V. TAGGE, 246 ARIZ. 486 (APP. 2019)

Issue: Whether the "public place" exception to immunity under AMMA applies to smoking inside a private vehicle in a public parking lot.



41

STATE V. TAGGE, 246 ARIZ. 486 (APP. 2019)


Holding: Immunity under AMMA does not extend to smoking marijuana in a public place. Public places under AMMA are not limited to enclosed areas. The fact that the public place was leased to a private company who then charged people to enter did not render it a non-public place. And the interior of the vehicle is not a separate space from the location in which it is found.



42

BONUS

Two cases of particular interest that deal with constitutional rights under state and federal constitutions...



43

STATE V. MIXTON, 247 ARIZ. 212 (APP. 2019),
REVIEW GRANTED NOV. 19, 2019

Issue:

Whether police acquisition of internet subscriber information and IP address violates Fourth Amendment of US Constitution or Arizona Constitution's private affairs clause (art. II, section 8)

44

STATE V. MIXTON, 247 ARIZ. 212 (APP. 2019),
REVIEW GRANTED NOV. 19, 2019



Chat between "tabooin520" and "UC"

45

**STATE V. MIXTON, 247 ARIZ. 212 (APP. 2019),
REVIEW GRANTED NOV. 19, 2019**

Topics addressed in COA's decision:

- *Carpenter v. United States* (police acquisition of cell-site location information requires search warrant)



- Reasonable expectations of privacy in the digital cloud-connected world
- Held: No Fourth Amendment violation; AZ Constitution violation, but good faith applied

46

**STATE V. MIXTON, 247 ARIZ. 212 (APP. 2019),
REVIEW GRANTED NOV. 19, 2019**

The 4th Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

"Private Affairs"
Clause of AZ Const:
"No person shall be disturbed in his private affairs, or his home invaded, without authority of law."

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**STATE V. MIXTON, 247 ARIZ. 212 (APP. 2019),
REVIEW GRANTED NOV. 19, 2019**




Petition for Review + Response + amicus briefs filed by APAAC, ACLU/Electronic Frontier Foundation, Goldwater Institute, Institute for Justice

AZ Supreme Court decision (forthcoming) should give more guidance on:

- Significance of difference in wording between "private affairs" clause and Fourth Amendment
- Whether to start with federal or state constitution claim first when a defendant raises both on appeal
- Appropriate methodology/analysis for deciding a state constitutional claim – lockstep / interstitial / primacy or primary approach
- What does "without authority of law" mean in the AZ Constitution's private affairs clause?

48



☒ Unable to agree

STATE V. MARTIN, 247 ARIZ. 101 (2019), PETITION FOR CERT. FILED (U.S. NOV. 12, 2019)

- Does double jeopardy bar retrial of a greater offense on which a jury was unable to agree after the defendant's successful appeal of his conviction on the lesser-included offense?

DOUBLE JEOPARDY!

<https://www.scotusblog.com/case-files/cases/arizona-v-martin/>
